IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.312 OF 1999
WITH
CRIMINAL APPEAL NO.325 OF 1999

CRIMINAL APPEAL NO. 312 OF 1999.

1. Prakash Rama Dalvi

2. Gajanan Sambhu Mhatre.

3. Tukaram Arjun Tiskar.

All residing at Village Sawad,
Tal. Bhiwandi, Dist.Thane.
(At present all the appellants are
in the custody at Yerwada Central
Prison). ..Appellants.
(orig.Accused
Nos.2,6,9)

V/s

The State of Maharashtra. ..Respondent.

Shri B.G. Tangsali, for the appellants.

Mrs. P.H. Kantharia, A.P.P. for the State.

CRIMINAL APPEAL NO. 325 OF 1999.

1. Shaniwar Lahu Dalvi.
2. Lahu Sakharam Dalvi.
Both R/o At Sawad,
Tal. Bhiwandi,Dist.Thane. .. Appellants.
(Orig. Accused
3 and 4).

V/s

The State of Maharashtra. .. Respondent.

Shri Ganesh Gole for the appellants.
Mrs. P.H. Kantharia,A.P.P. for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 18TH OCTOBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA,J.)

. The present appeals have been filed by the appellants against the judgment, dated 23rd April, 1999, passed by the Additional Sessions, Judge Thane, thereby out of 16 accused, appellants have been convicted under Section 147,148,149, 302, 325, 341,506 r/w 34 of Indian Penal Code and have been sentenced to suffer maximum punishment of rigorous life imprisonment, apart from respective fine and all other consequential orders.

2. **FACTS:-** There are two rival groups in the village Sawad, Tal. Bhiwandi and because of their last quarrels, both the groups had lodged the respective complaints against each other, 15 days prior to the date of incident.

3. On 23rd June, 1987 at about 6.30 a.m., as per the complainant, Changunabai, P.W.1 along with the brother of her husband, the deceased, Govind Patil left

the house to sell the milk to Kalyan. P.W. 2 Janardan aged 13 years, was also with them, as he was going to the School. At about 6.45 a.m. when they reached near the by-pass road of village Muthewal, suddenly, Ganpat (accused No.1) with sword and Prakash (accused No.2) and Shankar (accused No.3 came out from the shrubs by the the road. Appellant-accused No.3 Shaniwar took the pot containing milk from the head of the Govind Patil and kept it aside. Appellant-accused No.1 assaulted by sword on the head of the deceased, while appellant-accused No.2 caught hold around the waist of the deceased. Immediately, thereafter, on fall of Govind on the ground, other appellants viz., Chandrakant-accused No.5 and Gajanan accused No.6, with axe in his hand ,Eknath accused No.8, Lahu, accused No.4; Tukaram accused No.9 with gun in his hand, Shashi accused No.10, Shankar accused No.16 with stick in his hand and rests of the accused were having iron rod in their hands came out from the shrubs and assaulted the deceased. Lahu accused No.4 had assaulted the deceased on his back by means of iron rod. Accused No.9,Tukaram threatened the complainant P.W.1 not to go near the deceased. All the accused thereafter ran away towards

the village. P.W. 1 sent P.W. 2 Janardan to inform about the incident to her husband and other family members. Gopal Patil the husband of the complainant and wife of the deceased gone to the spot. The complaint was lodged to the police Station Padgha on 23/6/1987 at about 10.15 a.m. and she had named accused Nos. 1 to 10. The offence was registered by Patil, Police Inspector, P.W. 10 accordingly. All the requisite formalities have been complied with, including the preparation of various documents, recording of statements, seizure of blood stained clothes, weapons, instruments etc. The dead body of the deceased Govind was sent to Indira Gandhi Memorial Hospital, Bhiwandi for post-mortem. Dr. Satish Talekar, P.W. 5 had examined the dead body on 23/6/1987 between 4 p.m. to 5 p.m. and submitted post-mortem report Exh.18. The 10 external ante-mortem injuries and 5 internal injuries are described in the post-mortem report Exh.18. All the accused Nos. 1 to 16 were arrested. Before that they were absconding for more than 5 days from the date of occurrence of the incident. At the instance of respective accused, blood stained clothes and weapons were recovered in presence of the panchas. The blood

samples of the accused, as well as, of the deceased were also sent for the chemical analyser's report. All the reports have been part of the record. All the accused have denied the charges and prayed for trial. The trial of the accused No. 1 and 10 was abated because of their death. Their statements under Section 313 of Cr.P.C., were also recorded of all the accused. They specifically contended that there were long standing enmity between these two groups and therefore, they were falsely implicated. The prosecution has examined 10 witnesses. No evidence was led by the appellants-accused. The learned Additional Sessions Judge, Thane, has convicted the original accused Nos. 2 to 4, 6 and 9 and acquitted all other accused. Therefore, these two appeals,Criminal Appeal No. 312/1999 filed by the appellants original accused Nos. 2, 9 and Criminal Appeal No. 325/1999 filed by the appellants-original accused No. 3 and 4. The appellants- accused 2,3, 4 and 9 are released on the bail. The appellant-accused No.6 is in jail.

4. Heard Shri Tangsali and Shri Gole, the learned Counsel appearing for the respective appellants and Mrs.

Kantharia, the learned A.P.P. for the State. We have gone through the record of the case. We have noted the grounds s raised in appeal memo and submissions made by the respective parties.

5. **REASONS:-** There is no substantial dispute, in so far as, homicidal death of the deceased. The post-mortem report (Exh.18) and oral testimony of Dr. Satish Talekar, P.W. 5 has proved that the deceased had suffered 10 external ante-mortem injuries and 4 internal injuries on the vital parts of the body. P.W. 5 Dr. Satish Talekar has deposed and opined THAT the death was caused because of these injuries, inflicted by the various weapons like sword and axe. The timing of the death was disputed on the foundation that semi digested foods were found in the stomach of the deceased during the post mortem.

6. The learned Judge, based on the settled principles, as laid down by he Apex Court and other High Courts, in various judgments namely, Bhimappa Jinnappa Naganur V/s State of Karnataka, 1997 Criminal Law Journal,1801; Babu Ram Vs. State, 1996 Cr.L.J. 483

and rightly observed that it cannot be said that the deceased Govind Patil had taken his last meal in the night dated 22/6/1987 at about 9.30 p.m. to 11.00 p.m. and murder took place in the midnight between 22/6/1987 to 23/6/1987. The Apex Court in R.P. Prakash V. State of Uttar Pradesh, (1969) 1 S.C.C. page No. 48, held that the question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That factor alone cannot be decisive. In Nihal Singh V. State of Allahabad, A.I.R. (1965) Supreme Court 25, the Apex Court has held that the time required for digestion may depend upon the nature of food and on the health of a person at the particular time and digestive capacity of a person. In another decision the Apex Court has held in Shivaji V. State of Maharashtra, A.I.R. (1973) Supreme Court 2622 that the process of digestion greatly delayed in the case of vegetable food consumed by Indians. In case of Suresh Chandra Bihari and others V. State of Bihar 1995 Supplement (I) Supreme Court Cases 80, it has been held that the presence or absence of food at the time of post-mortem in relation to the time of death is based on various factors and circumstances. These particular

cases according to us no where supports the case of the appellants to disbelieve the evidence of eye witnesses that the murder was committed at about 6.45 a.m., on 23/6/1987.

7. Even if there are some discrepancies in the medical report and testimony of Dr. Satish Talekar, P.W. 5 about the exact time of death of the deceased. However after going through the evidence of P. W. 1 to P.W. 3 and P.W. 5, according to us, also the prosecution has proved that the death of Govind Patil was not prior to 4 a.m. on 23/6/1987. One cannot over look the expert, comments on the subject of rigor-motris as available in the book of Medical Jurisprudence and Toxicology of H.W.V. Cox at page 210 and 211 of 5th Edition of 1996.

> " In the warm climates of India, rigor mortis may commence in an hour or two and begin to disappear within eighteen to twenty four hours. Broadly speaking, the faster the rigor appears, the shorter the time that it persists. In temperate climates rigor lasts for two to three days, but sometimes may persist such longer, even up to five days or more".
>
> "With such great variation in the onset and duration of rigor mortis, it is obvious that little can be learned about the time of death.

> However, if a body is warm to the touch, and rigor mortis has not yet set in, then death will probably have occurred not more than three to four hours previously, perhaps even less in the Indian climates. Where the body is in full rigor, then death probably took place between six and thirty-six hours previously, though caution must be used in accepting this interpretation."

Therefore these submissions have no force. There is sufficient a evidence to prove including testimonies of P.W. 1 to P.W.3 that the deceased Govind Patil was assaulted and he died on 23/6/1987 at about 6.45 a.m.

8. The basic eye witnesses P.W. 1 Changunabai, P.W. 2 Janardan Patil, P.W. 3 Kamalabai have supported the prosecution case and the incident as recorded in the facts. The other circumstantial evidence, which corroborates the prosecution case are based on the evidence of P.W. 4 to P.W. 10, apart from various materials and documents placed and proved on the record. The recovery of the weapons, swords at the instance of accused No.1 Ganpat Exhs.95,96, axe and sticks at the instance of accused No.6, Gajanan Exhs.98, 103, iron rods at the instance of accused No.4, Lahu (Exhs.102, 97); rifle at the instance of accused No.9 Tukaram, (Exh.101), supports the prosecution case. All these evidence read with corroborative evidence, linked the

fact that the appellants with their common intention had committed the murder of the deceased and no one else.

9. P.W. 2 and P.W. 3 have corroborated the contents of complaint, as well as, prosecution case in all material aspects. P.W. 1 Changunabai, the sister-in-law of the deceased, who knew all the accused, as they were resident of same village, has deposed by naming the respective role played and weapons used by the accused, while assaulting the deceased. She had lodged complaint and identified the weapons also. This witness has been corroborated by the testimony of P.W. 2 Janardan, even though minor, being eye witness. He after noticing the incident, as directed by P.W.1, Changunabai went to call her husband Mr. Gopal Patil. P.W. 2 Janardan has also deposed and identified the accused and their respective roles. This witness has also corroborated and supported in entirety the testimony of P.W.1. All these witnesses remained in tact, except some minor discrepancies. Nothing could shake the testimony of these eye witnesses. P.W. 3 Kamlabai has witnessed the first incident of assault and went immediately to home and come back with mother.

P.W. 3 has named accused Shaniwar, Prakash and Ganpat. This witness has also corroborated the evidence of P.W.1 and P.W. 3 in respect of assault by Ganpat with sword on the head and Lahu with iron rod. P.W. 3 Kamalbai has also named seven accused persons, as witnessed by her.

10. Sainath, P.W. 4, has deposed to the effect that the deceased along with P.W. 1 and P.W. 2 were together at the relevant time. This witness has also seen the accused. This witness cannot be said to be got up witness, merely because of relation with the deceased.

11. P.W. 6, Ramdas even though, was declared hostile till, he has corroborated the case of the recovery of the gun from the accused Tukaram. P.W. 7 Ladku was the panch witness to the above seizure.

12. P.W. 8 Ramchandra has deposed and proved the recovery of sword at the instance of Ganpat and seizure of iron rod at the instance of accused Lahu. Three sticks at the instance of Gajanan were also seized.

13. P.W. 9 Subhas being a panch witness to the recovery of sword has also been declared hostile along with P.W. 6.

14. P.W. 10 Bhagwan, Investigating Officer, however proves the recovery and prosecution case, as narrated.

15. Considering the oral evidence of P.W. 1 to 3 based on other witnesses, even though they are related and interested witnesses, we are of the view that the testimonies of such interested or related witnesses cannot be discarded in the facts and circumstances of the case. They were the natural eye witnesses. The legal settled position in this respect is in a case of State of Punjab V. Vasantsingh and others, 1991 Cri. L.J., 410. The relevant quote is as under;

> "mere relations with the deceased is not good ground for discrediting the testimony of prosecution witnesses when their presence at the scene of occurrence was probable"

16. Non examination of independent witnesses in the present facts and circumstances of the case nowhere disturb the prosecution case. In view of the settled

principle of law, in this regard, as held by the Apex Court in Murugan Vs. State, 1993 Criminal Law Journal 1259. As observed already the incident took place in the early morning hours and not in the crowded locality and or area. In the morning hours, as narrated by P.W. 1 to P.W. 4, presence of these witnesses according to us, sufficient to support the prosecution case. The testimonies of these witnesses cannot be discarded, as Changunabai P.W. 1 after noticing the incident, immediately sent Janardan P.W.2 to call her husband, as nobody else was found or seen at the place of the incident. Therefore, non examination of any independent witnesses in such circumstances, cannot support the case of defence to draw the adverse inference against the prosecution.

17. There is a enmity between the two groups in question, but looking to the facts and circumstances of the case, and in view of the corroborated evidence of P.W. 1 to P.W. 10, it is difficult to over look the prosecution case, and as rightly considered by the trial Judge also. Out of 16 accused, only appellants have been convicted and the rests were acquitted. In the

present case, all the accused 1 to 4, 6 and 9 were named in the F.I R., which was lodged within 3 and 1/2 hours of the occurrence. The evidence of P.W. 1 and P.W. 4 corroborate to each other and also to the prosecution case, and pin point the respective roles and assaults. All these appellants, by using the respective weapons, which were duly recovered and as has been supported by P.W. 10, even though some panch witnesses have been declared hostile, still their basic evidence led with the other corroborative evidence, according to us sufficient to convict the appellants for the charges as framed.

18. Some minor discrepancies here or there, as held in Bharwada Bhoginbhai Hirjibhai V. State of Gujrat, 1983 S.C. 653, which do not go to the root of the matter and or shake the basic version of the witnesses, cannot disturb the prosecution story. The Apex Court in State of Uttar Pradesh V. Anil Singh, 1989 Cri.L.J. 88 has reiterated the same again. In the present case, according to us, the witnesses P.W. 1 to P.W. 4 are real and natural witnesses and have deposed the truth, what they had witnessed. The improvement and

inconsistency even if any, according to us, nowhere disturb the prosecution's main story and testimony of these witnesses, especially when medical evidence, as well as, other corroborative evidence fully supports the prosecution case.

19. **CONCLUSION:-** The learned Judge, according to us by giving reasons in detail, based on the evidence of P.W. 1 to P.W. 10, and has rightly noted the respective, roles played by the appellants apart from recovery of weapons and other materials in the Judgment, especially in para 47 to 63, 69 to 76, 82 and lastly in para 89. After going through the record we also find that the conviction, as based on the evidence and material placed on the record, is within the frame work of law and the record and therefore, it is maintained. There is no merit in these appeals.

20. For the reasons recorded above, both the appeals are dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]